



November 2, 1999

Mr. Monty Wade Sullivan
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR99-3086

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128511.

The City of Houston (the "city") received a request for documents related to a specific arson investigation. You have submitted as responsive to the request a copy of the Houston Arson Bureau investigation file. You state that you have released the basic information from the offense report in accordance with section 552.108(c) and *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You claim, however, that the remaining portions of the investigative file are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted documents.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section requires the withholding of information made confidential by statute. Article 5.46 of the Insurance Code provides for the release of information by an insurance company investigating a fire loss to a local fire marshal on request. Subpart (D) of the article provides that those receiving such information "shall hold the information in confidence until such time as its release is required pursuant to a civil or criminal proceeding." You explain that the Houston Arson Bureau incorporated the insurance company's report into its own offense report. Therefore, to the extent that the information responsive to the request was provided to the Houston Arson Bureau under article 5.46, it must be withheld from disclosure under section 552.101.

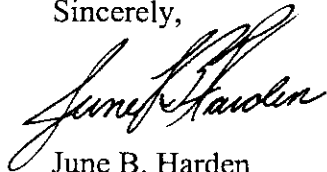
You claim that those portions of the investigative file that are not protected by article 5.46(D) of the Insurance Code are excepted from disclosure under section 552.108. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a)[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You advise "that the investigation of this fire is still open, and [the Houston Arson Bureau] intends to conduct further investigations into this case if and when new information or evidence becomes available." Based on your representation, we find that the release of the arson investigation file would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision No. 127 (1976) (arson investigation division of fire department is "law enforcement agency" under predecessor to current section 552.108). Therefore, the city may withhold the remaining investigative documents from disclosure under section 552.108(a)(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 128511

Encl. Submitted documents

cc: Mr. Ronnie E. Pfeiffer
Pfeiffer, Vacek, Pfeiffer, Scruggs & Hoffman, L.L.P.
10260 Westheimer, Suite 700
Houston, Texas 77042
(w/o enclosures)